



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Dr. Paul Ferrara, Director
Department of Forensic Science

FROM: James O. Towey
Assistant Attorney General

DATE: June 8, 2006

SUBJECT: Authority to promulgate 6 VAC 40-50-10 *et seq.* as emergency regulations in accordance with § 2.2-4011 of the Virginia Administrative Process Act.

In response to a request from the Department of Forensic Science (Department), I have reviewed the proposed regulations to be set forth in 6 VAC 40-50-10 *et seq.* and titled "Regulations for the Approval of Marijuana Field Test for Detection of Marijuana Plant Material." After concluding this review, I am of the opinion that the proposed regulations qualify as emergency regulations under Virginia Code § 2.2-4011(A)(ii). That section provides that regulations necessitated by an emergency situation include a situation in which Virginia statutory law requires that the regulations be effective within 280 days or less from their enactment, and the regulations are not exempt under the provisions of § 2.2-4006(A)(4).

During its 2006 Session, the General Assembly amended Virginia Code § 19.2-188.1 to require the Department to approve marijuana field tests for use by law-enforcement officers to enable them to testify to the results obtained in any trial for a violation of § 18.2-250.1 regarding whether or not any plant material, the identity of which is at issue, is marijuana. *See, 2006 Va. Acts. c. 447.* The General Assembly expressly stated that the Department shall promulgate regulations to implement the provisions of the Act to be effective within 280 days of its enactment in accordance with § 2.2-4011(A). The proposed regulations are not otherwise exempt under the provision of § 2.2-4006(A)(4). Thus, upon review of the proposed regulations to be set forth in 6 VAC 40-50-10 *et seq.*, I am of the opinion that the Department has the authority to promulgate the same as emergency regulations in accordance with § 2.2-4011(A)(ii).

Please note that this memorandum is intended to provide legal interpretations and legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency and this communication should not be construed as a comment for or against the merits of such action.